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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,115	11/22/2000	Hideaki Okada	0666.0230000	5060

26111 7590 02/18/2005

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WASHINGTON, DC 20005

EXAMINER

DEPUMPO, DANIEL G

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/717,115

Applicant(s)

OKADA ET AL.

Examiner

Daniel G. DePumpo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-12, 14-17, 19 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 14-17, 19 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Regarding the IDS filed on March 15, 2001, the examiner had previously drawn a line in pencil through various references, since these references were not available to the examiner at that time. This document has now been scanned as an image file resulting in the pencil lines becoming permanent. Now that the references are available to the examiner, applicant should provide a new copy of the IDS, so that the examiner may initial the citations.

2. Applicant's election without traverse of Group IV (fig. 14, claims 9-12, 14-17, 19 and 21-28 readable thereon) in the reply filed on 12/22/05 is acknowledged.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 19, 22-24, 27 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims recite a "differential gear *interlocking* with said motor shaft" (emphasis added). The term "interlocking" does not appear to be in the original specification, and the scope of this term cannot be determined.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 19, 22-24, 27 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the term “interlocking” cannot be determined. This renders the claims indefinite.

7. Claims 9-12, 14-17, 19 and 21-28 are rejected under Interference Estoppel under 37 C.F.R. § 1.658(c). These claims are obvious over the lost counts in view of Swanson ‘933 in view of Gaellatly.

Regarding claims 9-12, 14-17, 21 and 25-28, substantially all the claimed elements are present in the lost count of Interference No. 104497 (presented as claim 1 in U.S Patent 5,921,151 to Louis et al.) Although it is likely that a device such as that recited in the lost count would have included an oil suction port, a check valve, a filter, and a swash plate type pump; these elements are not specifically recited. Swanson, however, discloses a similar device including a swash plate type pump P, a port 84, a check valve 113 and a filter 91. It would have been obvious to modify the count by including a swash plate type pump as taught by Swanson, to allow for speed regulation at constant engine speed. It would have also been obvious to include a port, check valve and filter, as taught by Swanson, since these are necessary to account for leakage inherent in the pump. It is noted that Swanson uses a charge pump 92, so it is unclear whether port 84 comprises a “*suction* port”. However, Gaellatly teaches the well know use of a suction port with an interposed filter and check valve to accommodate leakage in a pump. It would have been obvious to eliminate the charge pump of Swanson by using a suction type system, as taught by Gaellatly, to provide a simpler and less expensive system.

Regarding claims 19, 22, 23 and 24, all the claimed elements are obvious over the lost count of Interference No. 104497 and are substantially set forth above. The lost count of Interference No. 104497, Swanson and Gaellatly, combined, do not teach the claimed differential

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gear and axles. However, these elements are recited in the lost count of Interference No. 104496 (presented as claim 1 in U.S Patent 5,802,931 to Louis.). It would have been obvious to include differential gears and axles, as set for in the lost count of Interference No. 104496 to provide an efficient and well-known means to drive the wheels.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel G. DePumpo
Primary Examiner
Art Unit 3611

dgd
2/17/05